



GRAND JURY
AMENDMENTS
BY REP. MERRILL NELSON
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1.

THE CONSTITUTIONS ON GRAND JURIES

Grand Juries under the state and federal system

“
No person shall be held to
answer for a capital, or other
infamous crime, unless on a
presentation or indictment of a
grand jury...

US Constitution, Amend V

“
Offenses shall be prosecuted by
information...or by
indictment...The formation of
the grand jury and the powers
and duties thereof shall be as
prescribed by the Legislature.

Utah Constitution, Art I, Section 13



PER UTAH'S CONSTITUTION,
CRIMINAL PROSECUTIONS CAN BEGIN
BY INFORMATION OR BY INDICTMENT



91,466

Criminal charges initiated in Utah by information/citation
in fiscal year 2020 ending June 30



0

Criminal charges initiated in Utah by indictment
in fiscal year 2020 ending June 30



INFORMATION V. INDICTMENT

INFORMATION:

- ▣ Filed by prosecutor (or citation by officer)
- ▣ Standard for a citation is probable cause
- ▣ Only filters are professional standards & trial for infractions and C or B misdemeanors.
- ▣ Preliminary hearing available to filter felonies and A misdemeanors, but the preliminary hearing standard is very low.



PRELIMINARY HEARING PROBABLE CAUSE STANDARD IS VERY LOW

Judge must view all evidence in light most favorable to prosecution & draw all reasonable inferences in prosecutor's favor.
State v. Schmidt 2015 UT 65

Defendant does not have a right to confront witnesses.
State v. Timmerman
2009 UT 58

Reliable hearsay is admissible
Rule 1102, Utah Rules of Evidence.

Most credibility determinations are outside the reach of a preliminary hearing judge.
State v. Goins 2017 UT 61

Defendant's ability to subpoena a victim witness is limited.
State v. Lopez 2020 UT 61

A preliminary hearing is not a discovery device for the defense, it is only a probable cause determination.
State v. Aleh. 2015 UT App 195



INFORMATION V. INDICTMENT

INDICTMENT:

- ▣ Must be authorized by a grand jury.
- ▣ Standard for indictment is clear and convincing evidence.
- ▣ Grand jury is authorized to weigh credibility.
- ▣ Grand jury can consider exculpatory evidence and any person may ask to present exculpatory evidence to the grand jury.



GRAND JURY PROCESS

1

A panel of 5 judges meets in each of Utah's 8 judicial districts at least once every 3 years.

2

Anybody can appear before the panel and ask for a grand jury.

3

The panel decides whether there is "good cause" to believe a grand jury is necessary.

“

In determining whether good cause exists under Subsection (3), the panel shall consider, among other factors, whether a grand jury is needed to help maintain public confidence in the impartiality of the criminal justice process.

Utah Code Ann. Section 77-10a-2(4)

“

the panel's judges may not refuse to summon a grand jury merely because they personally dislike the prosecutor who has made the request, and they may not... [consult] tarot cards or astrology tables. But so long as the panel considers the single factor it is required to consider, and so long as its choice of additional factors appears reasonably calculated to serve the purposes of the grand jury statute and the interests of justice, we must defer to its judgment.



GRAND JURY AMENDMENTS DOES 3 THINGS

- ▣ Increases transparency and prosecutor accountability;
- ▣ Clarifies what constitutes “good cause”
- ▣ Transfers costs of grand juries requested by local prosecutors from state to local government.



TRANSPARENCY

Grand Jury Amendments will increase transparency and prosecutor accountability when criminal charges are not filed.



TWO TRANSPARENCY IMPROVEMENTS

Lines 81-83

When a county or district attorney does not file criminal charges in a case of officers using deadly force, they must release the facts and legal standards used to reach that decision.

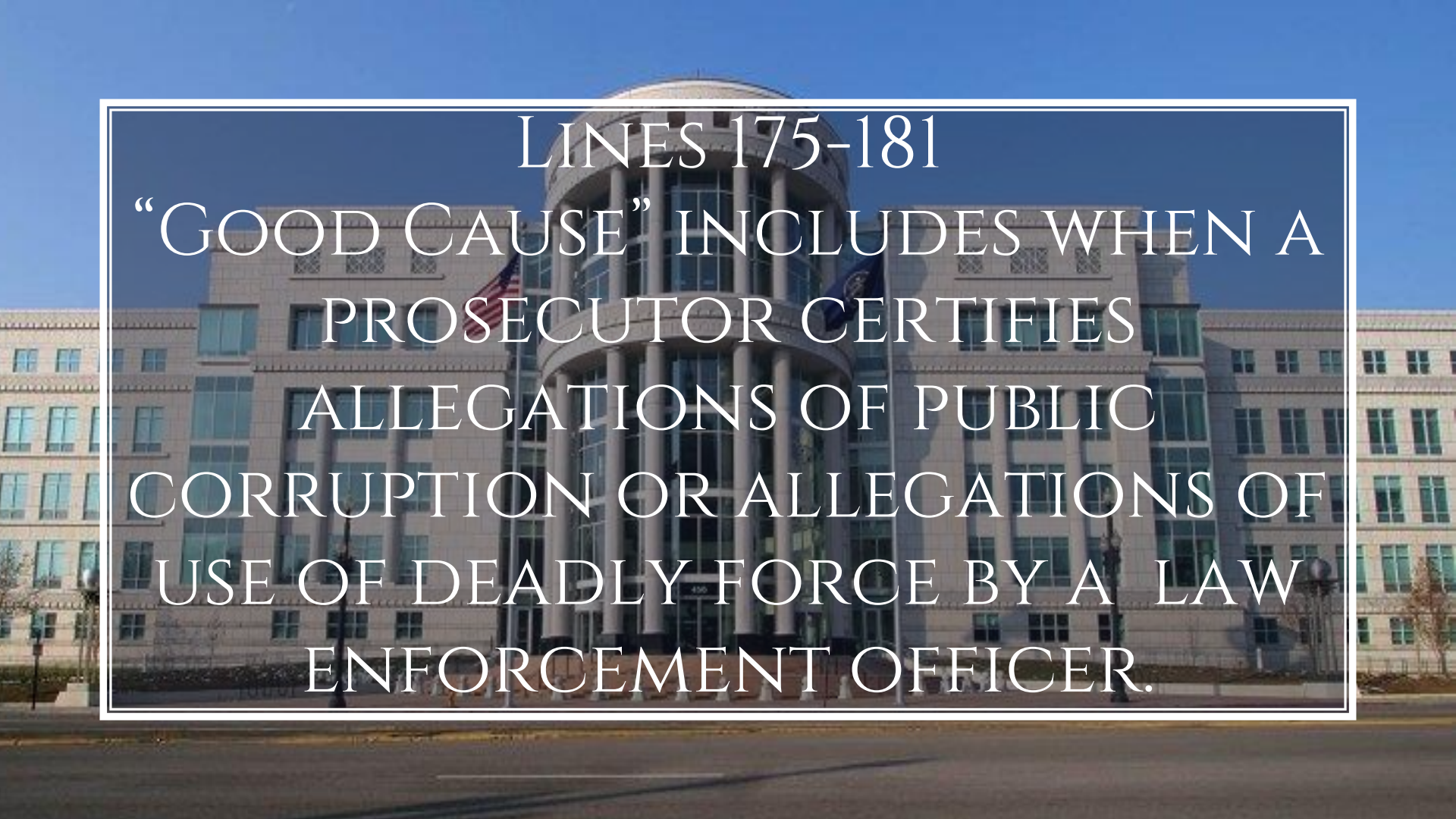
Lines 422-426

If a grand jury declines to indict an officer for the alleged use of deadly force, the transcript of the grand jury proceedings will be publicly accessible



“GOOD CAUSE”

The panel of judges will retain discretion, but two narrow circumstances will qualify as “good cause” for a grand jury.



LINES 175-181

“GOOD CAUSE” INCLUDES WHEN A
PROSECUTOR CERTIFIES
ALLEGATIONS OF PUBLIC
CORRUPTION OR ALLEGATIONS OF
USE OF DEADLY FORCE BY A LAW
ENFORCEMENT OFFICER.



CONTROL COSTS

Lines 504-506

When a local prosecutor asks for and receives a grand jury, the local government will pay the costs.



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